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Sequence Number: 08-01-17  
Notice ID(s): 2752  
File Date: 8/2/17

# Notice of Rulemaking Hearing

*Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.*

<b>Agency/Board/Commission:</b>	Department of Labor and Workforce Development
<b>Division:</b>	Bureau of Workers' Compensation
<b>Contact Person:</b>	Troy Haley
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*Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:*

<b>ADA Contact:</b>	Troy Haley
<b>Address:</b>	220 French Landing Dr. 1-B, Nashville, TN 37243
<b>Phone:</b>	615-532-0179
<b>Email:</b>	troy.haley@tn.gov

**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	Tennessee Room
Address 2:	220 French Landing Drive, 1-A
City:	Nashville, TN
Zip:	37243
Hearing Date :	09/28/17
Hearing Time:	10:00 a.m. <input checked="" type="checkbox"/> X CST/CDT <input type="checkbox"/> EST/EDT

**Additional Hearing Information:**

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**Revision Type (check all that apply):**

☒ Amendment  
☐ New  
☐ Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0800-02-12	Drug Free Workplace Programs
Rule Number	Rule Title
0800-02-12-.01	Purpose and Scope
0800-02-12-.02	Policies
0800-02-12-.03	Definitions

0800-02-12-.04	Notice to Job Applicants and Employees
0800-02-12-.05	Types of Testing
0800-02-12-.06	Refusal to Test
0800-02-12-.07	Drug Testing
0800-02-12-.08	Drug Collection Procedures
0800-02-12-.09	Cost of Drug Testing
0800-02-12-.10	Reporting and Review of Results
0800-02-12-.11	Alcohol Testing
0800-02-12-.12	Alcohol Collection Procedures
0800-02-12-.13	Cost of Alcohol Testing Abuse
0800-02-12-.14	Employee Protection
0800-02-12-.15	Employer Protection
0800-02-12-.16	Substance Use Education/Awareness
0800-02-12-.17	Confidentiality
0800-02-12-.18	Application Form
0800-02-12-.19	Appeal of Positive Drug or Alcohol Test

Chapter 0800-02-12 Drug Free Workplace Programs is amended by deleting the prior rule and replacing it with the following:

**0800-02-12-.01 PURPOSE AND SCOPE.**

- (1) Purpose: The purpose of these rules is to support the Tennessee Drug-Free Workplace Program designed to deter the use of drugs and alcohol in the workplace and to decrease the risks of injuries to co-workers and damage to property which may result from the use of drugs or alcohol in the workplace. These rules shall apply to those employers who voluntarily choose to participate in this program.
- (2) Scope: The provisions of these rules apply to all employers in the State of Tennessee subject to provisions of the Workers' Compensation Act who are certified members of the drug-free workplace program. The provisions of these rules are subject to any applicable collective bargaining agreement.

**Authority:** T.C.A. §§ 50-6-110(c), 50-9-101 and 50-6-418. **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998.

**0800-02-12-.02 POLICIES.**

- (1) A covered employer may establish reasonable work rules related to employee possession, use, sale, or solicitation of drugs or alcohol, including convictions for drug or alcohol-related offenses, and may take action based upon the covered employer's policies and rules.
- (2) The covered employer shall pay the cost of all testing which it requires of employees and job applicants.
- (3) Employers who implement a drug-free workplace program pursuant to these rules are entitled to the following benefits:
  - (a) Premium Discounts under T.C.A. Section 50-6-418 - An Employer will begin to accrue a premium discount on a pro rata basis as of the date of certification (the date of receipt by the Tennessee Bureau of Workers' Compensation). The covered employer's workers' compensation insurance company must apply to such policy the premium credit granted under this program or make payment for such credit effective after the annual final premium audit has been completed. In order to continue to receive the premium discount, an employer must renew annually the application for the Tennessee Drug-Free Workplace and be certified by the Tennessee Bureau of Workers' Compensation.
  - (b) A shift in the burden of proof pursuant to T.C.A. Section 50-6-110(c).



- (c) A covered employer who discharges or disciplines an employee or refuses to hire a job applicant in compliance with these rules and T.C.A. Section 50-9-108 is considered to have discharged, disciplined, or refused to hire for cause;
- (4) The procedures for laboratory reporting, and MRO review, and reporting of specimen test results shall be in accordance with those described in 49 C.F.R., Part 40. The MRO shall follow the SAMHSA MRO Manual.
- (5) All drug and alcohol tests under these rules shall be limited to the specific substances expressly identified on the bureau's website, unless prior written consent of the employee is obtained for other tests. Such written consent is required prior to any additional testing requested by a covered employer pursuant to its specific company policy.
- (6) Testing conducted pursuant to the requirements of any federal statute or regulation shall be deemed to be in conformity with these rules.
- (7) If an employee or job applicant has a positive confirmed post-accident drug test for a drug listed on the bureau's website, an employee/job applicant may lose his/her entitlement to workers' compensation benefits; provided, that the drug test was conducted according to these rules and guidelines. A rebuttable presumption is created that the drug or alcohol was the proximate cause of the injury. Such employee may be disciplined, up to and including termination, and may forfeit his or her eligibility for workers' compensation medical and indemnity benefits.
- (7) A covered employer may not discharge, discipline, refuse to hire, discriminate against or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test and by a Medical Review Officer.
- (8) Nothing in these rules shall prohibit an employer from conducting medical surveillance testing for exposure of employees to potential toxic substances in the workplace.
- (6) Nothing in these rules shall authorize any employer to test any employee or applicant for alcohol or drugs in any manner inconsistent with any constitutional or statutory requirements, including those imposed by the Americans with Disabilities Act and the National Labor Relations Act.
- (9) Nothing in these rules shall prohibit law-enforcement personnel from conducting drug or alcohol testing performed in accordance with applicable statutory or case law. If drug or alcohol testing should have been performed under these rules, but was not performed, the employer may consider testing results obtained by law enforcement personnel in lieu of testing under these rules.
- (10) A Medical Review Officer interpreting drug or alcohol testing pursuant to these rules does not have a physician-patient relationship with the tested employee or job applicant.
- (11) Any covered employer who has employees who are healthcare practitioners shall report a healthcare practitioner who tests positive for any drug on any government or private sector pre-employment or employer-ordered confirmed drug test, or who refuses to submit to a drug test, to the department of health and the practitioner's licensing or certifying board as required by T.C.A. Title 63, Chapter 1, Part 1. Regardless of the MRO report, or an Employer's subsequent action, the Employer shall report to the appropriate licensing board the confirmed positive drug test as required by T.C.A. Section 50-9-115. Employers are encouraged to share the MRO conclusion with the department of health and the practitioner's licensing or certifying board.

**Authority:** T.C.A. §§ 4-5-202, 50-9-101, 50-9-104, 50-9-108 and 50-9-111. **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998. Amendment filed September 15, 2008; effective January 28, 2009.

#### **0800-02-12-.03 DEFINITIONS.**

- (1) "49 C.F.R., Part 40" as used in these rules shall refer to the federal regulations pertaining to the testing of drugs or alcohol as promulgated pursuant to the authority of the United States Department of Transportation, compiled at 49 Code of Federal Regulations (C.F.R.), Part 40 in effect on the day of any drug or alcohol testing performed pursuant to these Rules.

- (2) "Alcohol" as used in these rules shall mean the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl alcohol.
- (3) "Alcohol test" means an analysis of breath or blood, or any other analysis which determines the presence, absence, or level of alcohol as authorized by the relevant regulations of the United States Department of Transportation (49 C.F.R., Part 40).
- (4) "Certified laboratory" means any facility equipped to perform the procedures prescribed in this chapter, in accordance with the standards of the United States Department of Health and Human Services (HHS), Substance Abuse and Mental Health Services Administration (SAMHSA), or the College of American Pathologists-Forensic Urine Drug Testing (CAP-FUDT).
- (5) "Chain of Custody" means the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances and providing accountability at each stage in handling, testing, and storing specimens and reporting test results.
- (6) "Confirmed alcohol test" means a second test used to identify the presence and level of alcohol in an individual. The required testing device must be on the National Highway Traffic Safety Administration (NHTSA) conforming products list.
- (7) "Confirmed drug test" means a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen, which test must be different in scientific principle from that of the initial test procedure and must be performed by a certified laboratory.
- (8) "Covered employer" means a person or entity that employs one (1) or more persons, is covered by the Workers' Compensation Law, and maintains a certified drug-free workplace pursuant to these rules.
- (9) "Drug" means such a substance as recognized or defined by the U.S. Food and Drug Administration; a chemical substance, such as a narcotic or hallucinogen, that affects the central nervous system, causing changes in behavior and often addiction.
- (10) "Drug Rehabilitation Program" means a service provider that provides confidential, timely, and expert identification, assessment, and resolution of employee drug or alcohol use.
- (11) "Employee" shall have the same definition as "Employee" as stated in T.C.A. Section 50-9-103.
- (12) "Employee Assistance Program" means an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services with regard to employee drug or alcohol abuse; referrals of employees for appropriate diagnosis, treatment, and assistance; and follow-up services for employees who participate in the program or require monitoring after returning to work. If, in addition to the above activities, an employee assistance program provides diagnostic and treatment services, these services shall in all cases be provided by the program.
- (13) "Employer" shall have the same definition as "Employer" as stated in T.C.A. Section 50-9-103.
- (14) "Healthcare practitioner" or "practitioner" means any person required to be licensed, permitted, certified, or authorized:
  - (a) Under title 63 by a board or committee under the division of health-related boards specified in T.C.A. Section 68-1-101(a)(8), who has humans for patients; or
  - (b) Under title 68, chapter 24, part 6; or
  - (c) Under title 68, chapter 140.
- (15) "Injury" shall have the same definition of "injury" as found in T.C.A. §50-6-102.



- (16) "Initial drug or alcohol test" means a "screening test" or "initial test" pursuant to regulations governing drug or alcohol testing adopted by the United States Department of Transportation (49 C.F.R., Part 40).
- (17) "Job Applicant" means a person who has applied for a position with a covered employer and has been offered employment conditioned upon successfully passing a drug test or alcohol screening, and may have begun work pending the results of the drug test or alcohol screening.
- (18) "Medical Review Officer" or "MRO" means a licensed physician who has knowledge of substance abuse disorders, laboratory testing procedures, and chain of custody collection procedures; who verifies as positive a confirmed test result; and who has the necessary medical training to interpret and evaluate an employee's positive test result in relation to the employee's medical history or any other relevant biomedical information.
- (19) "Point of Collection Test" or "Point of Collection Testing" means the various methods of commercially-obtained testing which are performed by the collector at the place and at the time the specimen is provided.
- (20) (a) "Prohibited Levels" for a drug or a drug's metabolites means cut-off levels on a confirmed drug test which are equal to or exceed the levels as listed on the Bureau's website and shall be considered to be presumptively positive;
- (b) "Prohibited Levels" for alcohol means cut-off levels on a confirmed alcohol test which are equal to or exceed the levels listed on the Bureau's website and shall be considered to be presumptively positive.
- (21) "Reasonable-Suspicion" means testing based on a belief that an employee is using or has used drugs or alcohol in violation of the covered employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Among other things, such facts and inferences may be based upon:
- (a) Observable phenomena while at work, such as direct observation of drug or alcohol use or of the physical symptoms or manifestations of being under the influence of a drug or alcohol;
- (b) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance;
- (c) A report of drug or alcohol use in the workplace, provided by a reliable and credible source;
- (d) Evidence that an individual has tampered with a drug or alcohol test during his employment with his/her current covered employer;
- (e) Information that an employee has caused, contributed to, or been involved in an accident or injury involving anyone at work; or
- (f) Evidence that an employee has used, possessed, sold, solicited, or transferred drugs or alcohol while working or while on the covered employer's premises or while operating the covered employer's vehicle, machinery, or equipment.
- (g) An accident which results in an injury to another individual or in property damage exceeding Five Thousand Dollars (\$5,000.00), or such minimum amount as set by U.S.DOT Guidelines, if less, shall be presumed to constitute reasonable suspicion for purposes of these rules.
- (22) "Safety-Sensitive Position" shall have the same definition as "Safety-Sensitive Position" as stated in T.C.A. §50-9-103.
- (23) "Specimen" shall have the same definition as "Specimen" as stated in T.C.A. §50-9-103.

- (24) "Split Specimen" has the same definition of "split specimen" as adopted by the United States Department of Transportation (49 C.F.R. Part 40) on the date of alcohol or drug testing.

**Authority:** T.C.A. §§ 50-9-103, 50-9-106, 50-9-109, and 50-9-111. **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998. Amendments filed September 15, 2008; effective January 28, 2009. Emergency rule filed October 4, 2010; effective through April 2, 2011. Amendment filed October 28, 2010; effective March 31, 2011. On January 18, 2011, the Department of Labor and Workforce Development withdrew the amendment. Emergency rule filed October 4, 2010 and effective through April 2, 2011 expired; on April 3, 2011 the rule reverted to its previous status. Amendment filed March 12, 2012; to have been effective June 10, 2012. The amendment was stayed by the Government Operations Committee on May 7, 2012; new effective date August 9, 2012.

#### **0800-02-12-.04 NOTICE TO JOB APPLICANTS AND EMPLOYEES.**

- (1) A covered employer shall provide at least sixty (60) days' prior notice to all employees that a drug-free workplace program is being implemented and the effective date of the program.
- (2) A notice of the covered employer's drug or alcohol testing policy must also be posted in an appropriate and conspicuous location on the covered employer's premises, and copies of the policy must be made available for inspection by the employees or job applicants of the covered employer during regular business hours in the covered employer's human resources office or other suitable locations.
- (3) Prior to testing, the employer shall give a written policy statement to employees and job applicants which contains a copy of the covered employer's drug and alcohol policy which complies with T.C.A. Section 50-9-101 et seq. and is based upon the model language provided on the bureau's website.
- (4) A covered employer shall include notice of any required drug and alcohol testing on vacancy announcements for positions for which drug or alcohol testing is required.

**Authority:** T.C.A. § 50-9-105. **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998.

#### **0800-02-12-.05 TYPES OF TESTING.**

A covered employer that establishes a drug-free workplace program shall conduct the following types of drug tests, alcohol tests, or both, to the extent permitted by law and maintain documentation thereof for at least twelve (12) months:

- (1) Pre-employment drug tests after a conditional offer of employment:
  - (a) An employer may perform point of collection testing as a screening test. Any positive test result obtained in this manner shall be confirmed by a certified laboratory.
  - (b) A refusal to submit to a drug test or a MRO-confirmed positive drug test may be used as a basis for refusing to hire a job applicant.
  - (c) An employer may, but is not required to, test job applicants for alcohol.
  - (d) An employer may, but is not required to, test any job applicant who has tested negative within the preceding twelve (12) months.
- (2) Reasonable suspicion as defined within these Rules:
  - (a) Employers shall, within twenty-four (24) hours after the observed behavior, document in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the drug testing and/or alcohol testing.
  - (b) A copy of this documentation shall be given to the employee and the original documentation



shall be kept confidential by the covered employer pursuant to TCA §50-9-109 and shall be retained by the covered employer for at least twelve (12) months.

- (3) Routine fitness-for-duty as required by employer policy or applicable law.
- (4) Follow-up to a positive test:
  - (a) At least once per year for a two (2) year period following a positive drug or alcohol test, the covered employer shall conduct a follow-up drug test, alcohol test, or both, as appropriate.
  - (b) In those cases in which the employee voluntarily entered treatment not based on an employer-administered drug or alcohol test, the covered employer is not required to conduct follow-up testing.
  - (c) Advance notice of a follow-up testing date shall not be given to the employee.
- (5) Post-accident:
  - (a) After an accident which results in an injury to any employee, the covered employer shall conduct a drug test, an alcohol test, or both, in accordance with these rules.
  - (b) Emergency medical care shall not be withheld or delayed for collection of drug and/or alcohol test specimens.
  - (c) The injured employee shall submit to testing when the injury is reported to the employer.

**Authority:** T.C.A. §§ 50-6-101, 50-6-419, 50-9-106, and 50-9-111. **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998. Amendment filed August 23, 1999; effective December 29, 1999. Amendments filed September 15, 2008; effective January 29, 2009.

#### **0800-02-12-.06 REFUSAL TO SUBMIT TO TESTING.**

- (1) If an employee or job applicant refuses to submit to a drug or alcohol test, the covered employer may discharge or discipline the employee or may refuse to hire the job applicant.
- (2) If an injured worker refuses to submit to a post-accident drug or alcohol test, it shall be presumed in the absence of clear and convincing evidence to the contrary that the presence of drugs or alcohol as defined in these rules was the proximate cause of the injury.
- (3) If an employee with a presumed positive test for failure to submit a test specimen wishes to contest the finding, the Federal Department of Transportation policies on "Shy Bladder" and "Shy Lung" shall be followed, at the employer's expense.
- (4) If the employee is unable to provide a urine specimen when requested, the United States Department of Health and Human Services mandatory guidelines on fluid administration and for alternative oral specimen collection shall be followed.

**Authority:** T.C.A. §§ 50-6-110(c)(2) and 50-9-108(f). **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998.

#### **0800-02-12-.07 DRUG TESTING.**

- (1) The list of drugs for which a covered employer shall be required to test employees and job applicants is the list on the bureau's website as posted on the date of the test and which shall be identical to the list of drugs found at 49 C.F.R., Part 40.
- (2) Tests for all drugs shall use the United States Department of Health and Human Services (HHS) approved methodology for screening tests and for subsequent confirmation tests and shall be performed in a HHS - certified laboratory, except as stated in Rule 0800-02-12-.05(1)(a) above.

- (3) The Cut Off levels for positive tests of these drugs shall be in accordance with Substance Abuse & Mental Health Services Administration (SAMHSA) guidelines.
- (4) As technology develops new testing methods, covered employers may rely on the results of those methods which have been approved by the Substance Abuse & Mental Health Services Administration (SAMHSA).
- (5) These rules do not prohibit an employer from conducting any drug testing which is otherwise permitted by law or by company policy. If drug testing is performed by an employer for drugs in addition to the testing required in Rule 0800-02-12-.07(1), the benefits listed in Rule 0800-02-12-.02(3) shall not apply with respect to testing the additional drugs not listed on the Bureau's website.
- (6) If an employee/job applicant receives a positive confirmed test result for an otherwise legal medication for which he/she does not hold a valid prescription, a covered employer is not prohibited from discharging the employee or refusing to hire the job applicant.

**Authority:** T.C.A. §§ 50-9-101(a) and (b), 50-9-104, 50-9-106(a)(1), 50-9-107(a) and (c), 50-9-110, and 50-9-111. **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998. Amendment filed September 15, 2008; effective January 28, 2009. Emergency rule filed October 4, 2010; effective through April 2, 2011. Amendment filed October 28, 2010; effective March 31, 2011. On January 18, 2011, the Department of Labor and Workforce Development withdrew the amendment. Emergency rule filed October 4, 2010 and to have been effective through April 2, 2011 expired; on April 3, 2011 the rule reverted to its previous status. Amendment filed March 12, 2012; to have been effective June 10, 2012. The Government Operations Committee filed a stay on May 7, 2012; new effective date August 9, 2012.

#### **0800-02-12-.08 ALCOHOL TESTING**

- (1) Alcohol testing shall be conducted using either a breathalyzer or a law enforcement obtained blood test.
- (2) All specimens identified as positive shall be confirmed according to the provisions of 49 C.F.R. Part 40 applicable on the date of testing.
- (3) The level for a positive test for alcohol for safety-sensitive employees found in 49 CFR, Part 40 shall apply to all employees.
- (4) As technology develops new testing methods, covered employers may rely on the results of those methods which have been approved by the Substance Abuse & Mental Health Services Administration (SAMHSA).
- (5) An employee in a safety-sensitive position may be tested for alcohol based on reasonable suspicion, routine fitness-for-duty, follow-up, or post-accident.

**Authority:** T.C.A. §§ 50-9-101(a) and (b), 50-9-104, 50-9-106(a)(1), 50-9-107(a) and (c), 50-9-110, and 50-9-111. **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998. Amendment filed September 15, 2008; effective January 28, 2009. Emergency rule filed October 4, 2010; effective through April 2, 2011. Amendment filed October 28, 2010; effective March 31, 2011. On January 18, 2011, the Department of Labor and Workforce Development withdrew the amendment. Emergency rule filed October 4, 2010 and to have been effective through April 2, 2011 expired; on April 3, 2011 the rule reverted to its previous status. Amendment filed March 12, 2012; to have been effective June 10, 2012. The Government Operations Committee filed a stay on May 7, 2012; new effective date August 9, 2012.

#### **0800-02-12-.09 EMPLOYEE PROTECTION.**

- (1) A covered employer shall not take disciplinary action against an employee solely upon the employee's first voluntary request to receive treatment for a drug or alcohol use disorder.

**Authority:** T.C.A. § 50-9-107(b) and (e). **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998.



## **0800-02-12-.10 EMPLOYER PROTECTION.**

- (1) A covered employer who discharges or disciplines an employee or refuses to hire a job applicant in accordance with these rules is considered to have discharged, disciplined, or refused to hire for cause.

**Authority:** T.C.A. § 50-9-108. **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998.

## **0800-02-12-.11 TRAINING REQUIRED FOR CERTIFICATION**

- (1) A drug-free workplace program must notify all employees that it is a condition of employment for an employee to refrain from reporting to work or working with the presence of drugs or alcohol in the employee's body;
- (2) If an injured employee tests positive or refuses to submit to a test for drugs or alcohol, the employee forfeits eligibility for workers' compensation medical and indemnity benefits.
- (3) Covered employers shall provide at least one (1) time one-hour of training to all employees at least one time. All employees must be trained within sixty (60) calendar days of an employer's implementation of a Tennessee Drug-Free Workplace Program or within sixty (60) calendar days of the employee's date of hire.

(a) This training shall include information on the following topics:

1. The covered employer's Drug-Free Workplace Program policies;
2. The covered employer's testing procedures;
3. The consequences for violating the covered employer's policies;
4. The specific drugs for which testing will be performed; and
5. Any employee assistance program (EAP) and/or substance abuse treatment options available for their employees.

(b) The training may also include information on the following topics:

1. The disease of addiction;
  2. Defining use versus abuse;
  3. The recovering employee in the workplace;
  4. Why people abuse substances;
  5. Avoiding relapse in the workplace;
  6. The role of the family in addressing substance abuse and addiction;
  7. The role of co-workers in addressing substance abuse and addiction;
  8. The role of co-workers in maintaining a drug-free workplace;
  9. The effects and dangers of commonly abused substances in the workplace;
  10. 12-step programs;
  11. Stress and the workplace;
  12. Safety and the workplace;
  13. Warning signs;
  14. The most commonly abused drugs in the workplace (e.g., marijuana, cocaine/crack, inhalants, alcohol, opiates, hallucinogens, prescription drugs, etc.);
  15. The physical and psychological effects related to the abuse of the above drugs, and others;
  16. The health and medical risks of substance abuse; and
  17. Avoiding substance abuse through wellness, exercise, diet, etc.
- (4) In addition to the employee training listed above, covered employers shall provide all supervisory personnel with an additional two (2) hours of supervisory training at least one time. Supervisory training shall include:

(a) Recognizing the signs of substance abuse in the workplace;

- (b) Documenting and reporting to the proper employer representative signs of employee substance abuse;
  - (c) Referral of an employee to Human Resources (HR) for counseling and possible treatment options;
  - (d) Being able to understand and explain the employer's Drug-Free Workplace Program policies; and
  - (e) Being able to understand and explain the Tennessee Drug-Free Workplace Program rules.
- (5) The Supervisory Training Program may include additional topics as listed in Section (2)(b) above.
- (6) The employee training and supervisory training component of the drug-free workplace program is meant to be flexible so that employers may be creative in conducting these trainings. Employers may utilize any available resource.
- (7) Covered employers shall keep appropriate records in order to document the completion of the employee and supervisory training requirements for each current employee and supervisor.

**Authority:** T.C.A. § 50-9-101 and 50-9-111. **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998. Amendment filed September 15, 2008; effective January 28, 2009.

#### **0800-02-12-.12 CONFIDENTIALITY.**

- (1) Information concerning drug or alcohol test results may be shared between representatives of the covered employer, laboratories, medical review officers, employee assistance programs, drug or alcohol rehabilitation programs, and their agents, but shall otherwise be kept confidential.
- (2) A covered employer, agent of such employer, or laboratory conducting a drug or alcohol test may share employee drug or alcohol test information or use such information when consulting with legal counsel. Management may share information as is reasonably necessary for making disciplinary decisions relating to violations of drug or alcohol standards of conduct adopted by an employer.

**Authority:** T.C.A. § 50-9-109. **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998.

#### **0800-02-12-.13 APPLICATION FORM.**

- (1) Any employer wishing to participate in the Tennessee Drug-Free Workplace Program shall file with the Tennessee Bureau of Workers' Compensation a completed Drug-Free Workplace Program application available on the Bureau's website and shall renew the application each year. Such employer shall be rebuttably presumed to be entitled to all applicable benefits under the Drug-Free Workplace Program for the twelve consecutive months immediately following the date of receipt by the Bureau of a fully-completed application form.

**Authority:** T.C.A. §§ 50-6-418 and 50-9-111. **Administrative History:** Original rule filed January 26, 1998; effective April 11, 1998.

#### **0800-02-12-.14 APPEAL OF POSITIVE DRUG OR ALCOHOL TEST**

- (1) An employee, having timely though unsatisfactorily challenged a positive confirmed test result to the MRO, may contest the result by timely filing a Petition for Benefit Determination (PBD) in accordance with the Rules pertaining to Mediation and Hearing Procedures pursuant to Tenn. Comp. R. and Regs. 0800-02-24.

**Authority:** T.C.A. §50-9-105. **Administrative History:** Original rule filed \_\_\_\_\_; effective \_\_\_\_\_.



I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: August 1, 2017

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator



Subscribed and sworn to before me on: August 7, 2017

Notary Public Signature: Darlene Carver-McDonald

My commission expires on: March 8, 2021

**Department of State Use Only**

Filed with the Department of State on: 8/2/17

Tre Hargett

Tre Hargett  
Secretary of State

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